

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) PACA Docket No. D-05-0003  
)  
Perfectly Fresh Specialties, Inc., )  
)  
)  
Respondent ) Decision Without Hearing  
) By Reason of Default

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) hereinafter referred to as the "Act", instituted by a complaint filed on October 1, 2004, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The complaint alleges that during the period November 1, 2002 through February 20, 2003, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 28 sellers, 796 lots of perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices in the total amount of \$263,801.40.

A copy of the complaint was mailed by the Hearing Clerk to Respondent by certified mail on October 1, 2004, and was returned by the U.S. Postal Service to the Hearing Clerk's office on October 18, 2004. The Hearing Clerk remailed the complaint via regular mail on November 5, 2004, and therefore served the complaint upon Respondent pursuant to Section 1.147 of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted By The Secretary (7 C.F.R. § 1.147,

hereinafter referred to as the "Rules of Practice), as of that date. Respondent did not file an answer to the Complaint within the 20 day time period prescribed by Section 1.136 of the Rules of Practice. Complainant moved for the issuance of a Decision Without Hearing by the Administrative Law Judge, pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). As Respondent failed to answer within the 20 day time period prescribed by the Rules of Practice, and upon the motion of the Complainant for the issuance of a Default Order, the following Decision and Order is issued without further investigation or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

#### Findings of Fact

1. Respondent is a corporation organized and existing under the laws of the state of California. Its business mailing address is 12840 Leyva Street, Norwalk, California 90650.
2. At all times material herein, Respondent was licensed under the provisions of the PACA. Pursuant to the licensing provisions of the Act, license number 20021539 was issued to Respondent on August 21, 2002. This license terminated on August 21, 2003, pursuant to Section 4(a) of the Act (7 U.S.C. § 499d(a)) when Respondent failed to pay its required annual renewal fee.
3. As more fully set forth in paragraph III of the complaint, during the period November 1, 2002 through February 20, 2003, Respondent purchased, received, and accepted, in interstate and foreign commerce, from 28 sellers, 796 lots of perishable

agricultural commodities, but failed to make full payment promptly of the agreed purchase prices in the total amount of \$263,801.40.

### Conclusions

Respondent's failure to make full payment promptly with respect to the 796 transactions set forth in Finding of Fact No. 3, above, constitutes willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)), for which the Order below is issued.

### Order

A finding is made that Respondent has committed willful, flagrant and repeated violations of Section 2 of the Act (7 U.S.C. § 499b(4)), and the facts and circumstances of the violations shall be published.

This order shall take effect on the 11th day after this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

Copies hereof shall be served upon parties.

Done at Washington, D.C.

this 31<sup>st</sup> day of March, 2005

Peter M. Davenport  
Administrative Law Judge